

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The petitioner made a timely application for fuel assistance for the 1999-2000 heating season. Her application was denied because she had not incurred the minimum (\$125 per year) fuel expenditure required for aid. In determining the petitioner's fuel need the Department used a "standard"

figure from a "proxy" table to determine the amount of fuel used in her apartment. That standard--\$295--was reduced by the amount of the petitioner's allowance from the housing authority--\$204--which left an unmet need of \$91. Thus, the Department determined that the petitioner's fuel liability for the coming year did not exceed the program minimum and it denied her assistance. A notice to this effect was mailed to the petitioner in July 1999.

3. The petitioner appealed that denial because she incurs additional heating costs in that she uses an electric heater to supplement her primary (gas) heat. The petitioner maintains that her primary heat only heats the apartment to 68 degrees on cold days, and she likes to have it warmer. She stated that she has taken this matter up with her landlord, but that he feels the primary heat source is adequate. She stated that she is otherwise satisfied with her apartment and gets along well with her landlord, and that she doesn't want to create any trouble with him.

4. There is no evidence that the petitioner's landlord is in violation of any health or safety codes in providing a heat source that only heats her apartment to 68 degrees. Although it is not unreasonable that she would desire to do so, there is no indication that the petitioner suffers from

any health condition that requires her to have her apartment heated to more than 68 degrees.

ORDER

The decision of the Department is affirmed.

REASONS

The income eligibility requirements for the fuel assistance program are set out by the provisions of state law found at 33 V.S.A. Sec 2600 et. seq. Prior to this year, the legislature required the fuel office to initiate a determination on eligibility by obtaining the actual fuel consumption figures of the household for the prior year.¹ 33 V.S.A § 2604(b). On June 1, 1999, the legislature amended that section to read as follows:

The secretary shall by rule establish a table that contains amounts that will function as a proxy for applicant households' annual heating fuel cost for the previous year. The season fuel expenditure estimates contained within such table shall closely approximate the actual home heating costs experienced by participants in the home heating fuel assistance program. Such table shall be revised no less than every three years based on data supplied by certified fuel suppliers to the office of home heating fuel assistance as required by rule. The secretary shall also establish by rule minimum amounts of

¹ During the initial year of the program when no records had been kept of consumption amounts and for persons who have no history of consumption use, proxy tables were used.

annual home heating fuel costs that vary based on the household's size and annual income.

No. 59, An Act Relating to the Home Heating Fuel Assistance Program, (S.98), Sec. 2.

Section 9 of the same statute mandates that the provisions take effect on the date of passage, June 1, 1999, and authorized the Secretary to use "expeditious rule-making procedures" to effectuate the provisions. Id. On July 16, 1999, the Secretary, through the Commissioner of Social Welfare, issued proposed regulations reflecting these legislative changes, which were to take effect on September 15, 1999. They were actually formally adopted as of September 22, 1999.

The regulations of the Department which were in effect at the time of the petitioner's application provided that the "annual heating fuel cost is determined for the eligible household based on actual reported costs for its primary heating source for the prior twelve-month period from May 1 through April 30". W.A.M. 2906.2(b), eff. 11/1/97. The amended regulation provides that "an annual primary heating fuel cost is determined for eligible households based on standard heating cost tables (referred to as 'proxy tables') identified in sub-section 2906.4 below." W.A.M. 2906.2(b),

eff. 9/22/99. The bulletin accompanying the proposed changes states that the new proxy tables were:

. . . developed in consultation with the Vermont Energy Investment Corporation and are derived from data on actual home heating consumption by fuel assistance household during the past two fuel seasons. The tables represent typical consumption of recipient households in the categories represented. Factors considered in developing the tables include: housing type, number of bedrooms, rental and home ownership, fuel used, secondary heat source, cost of fuel, number of household occupants, and long-term average heating degree days by region of state.

State of Vermont, Agency of Human
Services, Social Welfare Bulletin,
No. 99-16, Pg. 5, 7/16/99

The effect of the new regulations is not only to abandon the prior calculation of the applicant's actual fuel usage in favor of the "proxy" table, but also to require the use of a new "proxy" table which has values considerably lower (approximately \$200 per year for some fuel types) than the prior "proxy tables" (used for persons with no fuel usage history). See W.A.M. 2906.4, eff. Sept. 1, 1996. This reduction presumable occurred because of the new method of calculating the proxy table which requires a finding of the typical fuel consumption for participants in the program, and not for the general population. Any applicant whose eligibility was calculated using the old proxy table or an

actual figure less than the new proxy table will be affected by this change.

The language used by the legislature in its June 1, 1999, amendment clearly mandated the Department to revise its proxy table to reflect the typical usage of participants and to use this table in lieu of any actual costs. Although the regulations reflecting these changes did not formally go into effect until September 22, 1999, the Department's old regulations were rendered obsolete on June 1, 1999, because they conflicted with the authorizing statute. At that point, the Department was required to make decisions consistent with the statutory mandate, which it has done in this case when it calculated the petitioner's eligibility based on the new proxy tables rather than her actual usage.

The other steps used in the determination of eligibility in this case have not changed. Under its regulations, the heating assistance office is required to look first at the annual primary heating fuel cost from the new "proxy" table at W.A.M. 2906.4 and P-2905. For the petitioner, who lives in an apartment that is heated with natural gas, that annual amount is \$295. From that amount, the Department is required to deduct any heating allowance the applicant may receive from the state housing authority to obtain the net annual heating

fuel cost. W.A.M. P-2906.2(B). Those standards are found in a table at P-2905(C). For the petitioner (again based upon the size of her dwelling and the type of fuel) the allowance is \$204 annually. When that heating allowance (\$204) is deducted from the annual primary heating fuel cost (\$295) the result is \$91 for the net annual heating fuel cost.

The next step in the eligibility process is a comparison of that net annual heating fuel cost figure with figures found in a table of minimum heating fuel costs. W.A.M. 2906(C). That table operates on a sliding scale depending upon the income of the applicant, which is then expressed as a percentage of the federal poverty guidelines. The absolute minimum net heating fuel cost is \$125 annually, which reflects an income at or below 64% of the poverty guideline.² The petitioner's net heating fuel cost was compared with that lowest figure, and was found to be less. The regulation specifically provides that households with a net annual heating cost that is equal to or less than the minimum amount is "ineligible for Fuel Program benefits." W.A.M. 2906.2(C).

The regulations also provide that fuel assistance is available to eligible households to help cover the costs of

their "primary heating source". WAM § 2900. Nothing in the regulations allows households that use a supplemental heat source, especially one used to heat their homes to a level beyond the minimum required for health and safety, to receive additional fuel assistance.

The eligibility determination process for the fuel assistance program is complex and technical. However, the regulations adopted by the Secretary appear to follow the legislative mandate and were properly applied in this case. Therefore, the Board is bound to uphold the decision of the Office of Home Heating Fuel Assistance. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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² The minimum fuel consumption figure under the new regulations has dropped \$32 in this category from the figure in the old regulations, a change that is favorable to applicants.